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December 20, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, DC 20554

**NOTICE OF EX PARTE  
CONTACT**

**Re: WC Docket No. 11-141; Petition of GCB Communications, Inc., d/b/a Pacific  
Communications and Lake Country Communications, Inc., for Declaratory Ruling**

Dear Ms. Dortch:

On December 19, 2011, Robert Aldrich and I on behalf of the American Public Communications Council met with William Dever, Denise Coca, and Michelle Berlove of the Competition Policy Division of the Wireline Competition Bureau. Also present was Joel Marcus of the General Counsel's office. Glenn Hotchkiss, representing the Petitioners in the above captioned matter also participated by telephone.

We discussed the pending petition in the above referenced matter. The attached presentation covers the issues we discussed. Other issues already of record in the comments were also discussed as relevant to any of the points in the attached presentation. Some questions were asked regarding the court proceedings and except as mentioned in the next sentence, all the information provided is already of record in the Reply Comments of the Petitioners. The staff also inquired if there was ever a determination of what happened to the coding digits that did not accompany the calls that were unpaid. Mr. Hotchkiss explained that there was no court determination because evidence on the issue was produced after discovery had closed and the evidence was not admitted by the court.

Please feel free to contact me with any questions.

Respectfully submitted,

  
Albert H. Kramer

cc: By Electronic Mail  
Mr. William Dever  
Ms. Denise Coca

Ms. Marlene Dortch  
December 20,, 2011  
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Ms. Michelle Berlove  
Mr. Joel Marcus

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**Payphone Compensation / Flex ANI Declaratory Ruling**  
**APCC/GCB, et al.**  
**WCB Dkt. No. 11-141**  
**December 19, 2011**

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Communications, Inc.*

## Payphone Compensation / Flex ANI Declaratory Ruling

### SUMMARY

The issue in this case is whether:

- If a PSP has subscribed to a payphone line equipped with Flex ANI, is the PSP entitled to compensation from a Completing Carrier, even if some completed calls are not tracked by the carrier due to a Flex ANI failure somewhere in the call chain?

The answer is a simple “yes”:

- PSPs are entitled to compensation for “each and every” completed call.
- FCC regulations place the tracking *and* payment obligations solely on the Completing Carrier.
- The Common Carrier Bureau ruled that PSPs’ only coding-digits obligation is to order Flex ANI-equipped payphone lines;
- The Bureau also ruled that Completing Carriers must order Flex ANI transmission service from LECs and “ensure that there are no problems in providing and receiving the FLEX ANI digits.”
- Therefore, if a call from a payphone line is missing Flex ANI digits and is not tracked by the Completing Carrier, the Completing Carrier must compensate the PSP, regardless of fault.
- This “strict liability” result is fair because:
  - Completing Carriers are well situated to prevent, detect, and fix Flex ANI failures.
  - PSPs, by contrast, cannot protect themselves from loss due to Flex ANI failures.

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## Payphone Compensation / Flex ANI Declaratory Ruling

### I. THE FCC'S PAYPHONE COMPENSATION RULES PLACE THE TRACKING AND PAYMENT BURDENS SOLELY ON THE COMPLETING CARRIER

- A. The FCC's statutory mandate is to ensure that PSPs are fairly compensated for "each and every" call.
- B. The FCC rules impose two obligations on the Completing Carrier:
  - 1. § 64.1300: Pay for all completed calls. This is independent of the Completing Carrier's tracking success or failure, or its cost recovery from its customers.
  - 2. § 64.1310: Accurately track all completed calls; submit a sworn statement that payment is accurate and "is based on 100% of all completed calls". § 64.1310(a)(1), (3).
- C. PSPs are not given *any* call tracking responsibilities under the regulations.
- D. Therefore, if a call is not tracked because payphone-specific coding digits are not present:
  - 1. The Completing Carrier is not excused from its § 64.1300 obligation to pay for the call.
  - 2. The Completing Carrier has violated the § 64.1310(a) call-tracking rules and must make the PSP whole.
- E. The Completing Carrier may have a separate right to recover damages from an Intermediate Carrier or LEC.



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## Payphone Compensation / Flex ANI Declaratory Ruling

- II. A REASONABLE CONSTRUCTION OF THE “TRANSMIT” LANGUAGE IN THE *PAYPHONE ORDERS* IS CONSISTENT WITH THE PLAIN MEANING OF THE FCC REGULATIONS AND THE STATUTE
- A. The FCC used the “transmit” language in the context of determining when a *payphone* is *eligible* to be paid per-call compensation.
1. While this language created confusion as to whether *PSPs* themselves had to transmit coding digits, all parties and the Court of Appeals now agree that the *PSP* plays no part in the actual transmission of coding digits.
  2. Nothing in the *Payphone Orders* indicates that compensation for calls completed from an eligible payphone should be denied if coding digits are missing from specific *calls*.
- B. The *Coding Digit Waiver Orders* clarified each party’s coding digit obligations.
1. *LECs* are required to respond to *IXCs*’ requests for Flex ANI service and to coordinate the provision of that service with the *IXCs*.
  2. *PSPs* are required only to subscribe to payphone lines equipped with Flex ANI.
    - a. *PSPs* are explicitly *not* required to request the *LECs* to provide Flex-ANI service to the *IXCs*.
  3. Nothing in the order makes *PSPs* responsible for ensuring that *LECs* actually send Flex ANI coding digits to *IXCs*.

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## Payphone Compensation / Flex ANI Declaratory Ruling

### III. THE CODING DIGIT ORDERS MAKE COMPLETING CARRIERS RESPONSIBLE FOR ENSURING THAT THEY RECEIVE FLEX ANI CODING DIGITS

- A. Flex ANI is an exchange access service offered by LECs to IXCs.
- B. Completing Carriers are not required to utilize Flex ANI. If they wish to do so:
  - 1. "IXCs must request . . . this service . . . . PSPs are not required to request the LEC payphone-specific coding digits transmission service to IXCs." 13 FCC Rcd at 5020, ¶ 37.
- C. Part of the Completing Carrier's tracking obligation is to make sure that Flex ANI is actually transmitted to it by the LEC (either directly or through an Intermediate Carrier).
  - 1. "IXCs must request, test, and coordinate with LECs to obtain this service under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC . . . ." *Id.*
- D. Therefore, if Flex ANI digits are missing from a call originating from a Flex ANI-equipped payphone line, the Completing Carrier still owes the PSP compensation for that call, regardless of which carrier is at fault.

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## Payphone Compensation / Flex ANI Declaratory Ruling

### IV. IT IS FAIR TO REQUIRE COMPLETING CARRIERS TO BEAR THE BURDEN OF ADDRESSING FLEX ANI PROBLEMS

#### A. Completing Carriers are well situated to prevent, detect, and fix Flex ANI failures

1. Each Completing Carrier can decide if Flex ANI is a good tracking choice for its particular situation.
2. Completing Carriers order Flex ANI and can directly confirm that Flex ANI is being transmitted.
3. Completing Carriers can “test” and “coordinate with LECs . . . to ensure that there are no problems in providing and receiving the FLEX ANI digits.”
  - a. If there is an Intermediate Carrier, the Completing Carrier has a contractual means to ensure that Flex ANI is ordered and tested by the Intermediate Carrier.
4. Completing Carriers can quickly detect Flex ANI failures utilizing LEC-provided payphone ANI lists.

#### B. PSPs, by contrast, are helpless to protect themselves from loss due to Flex ANI failures

1. PSPs do not use Flex ANI or decide whether it will be used by a Completing Carrier.
2. PSPs do not order Flex ANI from the LEC or Intermediate Carrier.
3. As PSPs do not initiate or receive Flex ANI transmissions, they cannot tell if calls were delivered to a carrier without Flex ANI digits.
4. PSPs are unlikely to even learn about Flex ANI failures until after their payments inexplicably drop (three to six months after the calls were made).



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## Payphone Compensation / Flex ANI Declaratory Ruling

### IV. IT IS FAIR TO REQUIRE COMPLETING CARRIERS TO BEAR THE BURDEN OF ADDRESSING FLEX ANI PROBLEMS (contd.)

A. Completing Carriers are well situated to prevent, detect, and fix Flex ANI failures

5. Completing Carriers have numerous ways to mitigate losses and fix Flex ANI problems:
  - a. Test their own systems;
  - b. Use carrier to carrier procedures to isolate the source of the problem;
  - c. Utilize ANI lists to track calls and compensate PSPs pending a fix.
6. Completing Carriers have a remedy if another carrier is at fault.

B. PSPs, by contrast, are helpless to protect themselves from loss due to Flex ANI failures

5. The PSP cannot tell if the Completing Carrier's tracking system is capturing Flex ANI.
6. PSPs cannot ensure that alternative call-tracking methods are used by the Completing Carrier.
7. PSPs have no effective way to prove whether a LEC or other carrier transmitted Flex ANI with a particular call.